

Is Replacing Hudūd the Same as Replacing the Sharī'ah



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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

The brother is asking: Is replacing the Hudūd (shar'i punishments) the same as replacing the Shari'ah (the legislation).

The Hudūd are from the Shari'ah. So whoever replaces a Hadd (punishment) that is known as definitive, that falls under replacing the Shari'ah. Replacing (tabdīl) is not the same as abandoning (tark). The one who replaces one specific matter is equal to replacing the entire Shari'ah. Allāh (جَلَّالَهُ) said:

﴿أَفْتُمْنُونَ بَعْضَ الْكِتَابِ وَتَكْفُرُونَ بِبَعْضٍ﴾

So do you believe in part of the Scripture and disbelieve in part? [2:85]

And this why Allāh (جَلَّالَهُ) said:

﴿إِنَّمَا النَّسِيءُ زِيَادَةٌ فِي الْكُفْرِ﴾

Indeed, the postponing [of restriction within sacred months] is an increase in disbelief. [9:37]

So when the replacement increases, the seriousness increases, and the judgment (of kufr) remains the same. When a person abandons the Judgment of Allāh in a specific case, that is what the Salaf labeled a kufr duna kufr (a minor kufr).

As for replacing the Shari'ah of Allāh, there is no dispute among the 'Ulamāa that it constitutes kufr. And I often quoted Abī Muhammad ibn Hazm رحمه الله for you.

He viewed the one who judges with a portion of the injil (the gospel) while he abandoned the Shari'ah of Allāh as a kāfir and murtad (apostate) and he said that not even two Muslims would disagree on this.

This one is judging with the revealed laws of Allāh, however it is abrogated. And he abandoned the Judgment of Allāh that abrogated (the previous). He considered him a murtad according to the ijmaa'. So what about the one who replaces the Shari'ah of Allāh and judges with the man made laws?

And there is a difference between (ruling in) a specific case, and the issue of replacing (tabdīl). Abandoning (tark) is like for example when we have a judge or a ruler, and a case was brought to him and he has to give the order to execute a family member or to cut off his hand. So out of compassion for him and waives the Hadd punishment from him, without deeming it permissible. This is the specific case that is known among the Fuqahāa (jurists), and of which the Imāms said it is kufr duna kufr (a minor kufr). Because he didn't commit an act which nullifies the foundation of Al-Imān. And I don't know about a scholar who said that such a case constitutes major kufr.

When it comes to replacing, he makes it a legislation for the people (to follow). So he negates (عطل) from this side, and he legislates (شرع) from the other side. And he replaces (بدل) from this side, and he legislates (شرع) from the other side.

For example, when it comes to the Ruling of Allāh pertaining to Al-Qisās (retribution), Allāh (جَلَّالَهُ) said:

﴿وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ﴾

And We ordained for them therein a life for a life. [5:45]

And Allāh (جَلَّالٌ) said:

﴿وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالًا مِّنَ اللَّهِ ^{عَزَّ}﴾

[As for] the thief, the male and the female, amputate their hands in recompense for what they committed as a deterrent [punishment] from Allāh. [5:38]

So he approaches these punishments and he removes them. And he says: Instead of the death penalty we give prison time, and instead of cutting the hand of a thief off we give a fine.

Such a person has replaced the Ruling of Allāh! Such a person has replaced the Ruling of Allāh, and he enforced it on the people. So he has replaced the Sharī'ah of Allāh in his totality. He has replaced the Sharī'ah of Allāh in this case in its totality!

And he says to the people this is what you must act upon, and this is what I have legislated for you. Such a person in this case becomes a mushrik!

Because Allāh (جَلَّالٌ) said:

﴿أَمْ لَهُمْ شُرَكَاءُ شَرَعُوا لَهُمْ مِّنَ الدِّينِ مَا لَمْ يَأْذَنَ بِهِ اللَّهُ ^{عَزَّ}﴾

Or have they other deities who have ordained for them a religion to which Allah has not consented? [42:21]

And this is the same shirk as the shirk of the early mushrikīn:

﴿حُلُونَهُ عَامًا وَيَحْرِمُونَهُ عَامًا لِيُوَاطِئُوا عِدَّةَ مَا حَرَّمَ اللَّهُ﴾

They make it lawful one year and unlawful another year to correspond to the number made unlawful by Allāh. [9:37]

And Allāh (جَلَّالٌ) named this kufr (disbelief), He said:

﴿إِنَّمَا النَّسِيءُ زِيَادَةٌ فِي الْكُفْرِ﴾

Indeed, the postponing [of restriction within sacred months] is an increase in disbelief. [9:37]

Some people confuse the (judging in a) specific case with replacing and legislating laws. Legislating (tashri') and replacing (tabdīl) is kufr! Some Juhhāl (ignorants) say: "They differentiate between this and that matter, and they differentiate between a little and a lot." And when it comes to shirk there is no difference between a lot or a little. But it is due to his ignorance that he doesn't understand.. He doesn't understand the difference between (judging in a) specific case which contains merely abandoning (tark), and a specific case which contains replacing (tabdīl). Replacing in a specific case is kufr, who said that we differentiate between (replacing) twice, thrice or four times? The more he replaces the more takfir we make of him, and the less he replaces the less we make takfir of him. This has no base.

Replacing (tabdīl) in general is kufr whether it is one or ten cases! All of this destroys the foundation of Al-Imān. We don't differentiate in this matter.

As for abandoning (tark), there is nothing reported which indicates that he has committed major kufr... because he didn't commit an act which nullifies the foundation of Al-Imān.

The distinction between little and much is a well-known method among scholars in various matters. Like abandoning the Salāh for example. There are various scholarly opinions among the 'Ulamāa. Some said he becomes a kāfir when he abandons Salāh in its totality, and others said he becomes a kāfir by abandoning just one Salāh. And this is also confirmed from a group from among the Sahābah, from them Hudhayfah ibn Al-Yamān and others. And ibn Hazm said about it, that it's the Madhab of the Sahābah. And from them are scholars like ibn Taymiyyah who said: He becomes a kāfir when he abandons more than he prays. Thus these are well-known scholarly opinions that make a distinction between certain matters in terms of quantity and capacity.

However, we do not distinguish in the matter of Replacing (tabdil). We do not distinguish between judging in one or ten cases. So when he judges in ten cases we make takfīr of him, and when he judges once, we don't make takfīr of him. This person has replaced the Religion of Allāh, and he is a legislator! Such a person has made himself a partner to the Lord of All Worlds!

In the case of replacing (tabdīl) and in the case of legislating (tashrī'), he becomes a kāfir even if it is just one case. This falls under the statement of ibn Taymiyyah:

﴿أَوْ بَدَّلَ الشَّرْعَ الْمَجْمُوعَ عَلَيْهِ؛ كَانَ كَافِرًا بِاتِّفَاقِ الْفُقَهَاءِ﴾

Or replaces the Shari'ah that is agreed upon by consensus, then he is a kāfir by the consensus of the Fuqahāa.

And also under the saying of ibn Hazm:

﴿ لا خلاف بين اثنين من المسلمين أنه منسوخ وأن من حكم بحكم الإنجيل مما لم يأت بالنص عليه وحي في شريعة الإسلام فإنه كافر مشرك خارج عن الإسلام ﴾

There is no dispute between two Muslims that this (previous law) is abrogated. And the one who judges with the injīl which doesn't correspond to what is revealed in the Shari'ah of Islām, he is a kāfir and mushrik who left the fold of Islām.

And also under the saying of Ishāq ibn Rahawāyah:

﴿ من رد شيئاً أنزله الله أو جاء به النبي صلى الله عليه وسلم فإنه كافر ﴾

The person who rejects something from what was revealed by Allāh, or with which the Prophet (ﷺ) came with, is a kāfir.

